

STATE OF MICHIGAN
COURT OF APPEALS

MARGARET G. PRICE and CRAIG B. PRICE,

Plaintiffs-Appellants,

v

SCOTT HILLER, CHRISTOPHER KUHL, SCOTT
WATSON, COUNTY OF JACKSON and KEVIN
CALDWELL,

Defendants-Appellees.

UNPUBLISHED

February 7, 2003

No. 234315

Jackson Circuit Court

LC No. 00-001457-NI

MARGARET G. PRICE and CRAIG B. PRICE,

Plaintiffs-Appellants,

v

SCOTT HILLER, CHRISTOPHER KUHL, SCOTT
WATSON, COUNTY OF JACKSON, KEVIN
CALDWELL, and MICHIGAN STATE POLICE,

Defendants-Appellees.

No. 234347

Court of Claims

LC No. 00-017607-CM

Before: Neff, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as a matter of right the circuit court's order granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(10) in this automobile negligence case.¹ We reverse.

¹ Although defendants brought their motions for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10), the parties and the circuit court relied on documentary evidence beyond the pleadings. In this situation, we treat the motions as having been granted pursuant to MCR 2.116(C)(10) and we examine both the pleadings and additional documents. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

This case involves a police chase of a suspected stolen pickup truck. Numerous police agencies, officers, and vehicles were involved not only in the chase itself, but in efforts to stop the pickup along its route to the expressway where the accident occurred which injured Margaret Price. These efforts included officers placing so-called “stop sticks” in the roadway which resulted in the left front tire of the pickup going flat before it reached the expressway. During the chase, the entire left front tire became separated from the rim, and for the latter stages of the chase the pickup was running on the front left rim.

Estimates of the speed of the vehicles during the expressway chase varied from below fifty miles per hour to over eighty miles per hour. One State Police vehicle was positioned in front of the pickup and other police vehicles followed behind. The pickup sometimes drove partly on the shoulder of the expressway, and sometimes in the paved portion, traveling east. At some point, the pickup left the eastbound lanes altogether, traveled through the grassy median, entered and crossed the westbound lanes, went up onto an expressway exit ramp and hit Margaret Price’s vehicle as it was exiting the expressway. All of the police reports which were filed concluded that the pickup driver lost control of the vehicle when he left the eastbound lanes. The passenger of the pickup testified that the driver lost control at this point also. The questions are: what caused the loss of control, and could the driver have regained control before the pickup struck the Price vehicle. It is in answering these questions that we find genuine issues of material fact which leads us to reverse the summary disposition entered for defendants.

As to what caused the loss of control, the pickup driver and his passenger both testified that a State Police vehicle struck the pickup two or three times causing the loss of control. As noted in the trial court’s opinion, the passenger also testified that when the driver of the pickup tried to turn back into the eastbound lanes, the state police vehicle hit the pickup, causing it to lose control. This was denied by the officers involved in the chase when they were deposed, setting up a classic dispute of fact and jury question.

There was deposition testimony that permission was requested and granted for officers to force the pickup off the road. The officers denied that the action was actually taken and a photo of the pickup taken after the accident does not show any obvious damage to the right side of the vehicle. However, there is testimony that there was some minimal damage to the right side of the pickup and evidence of left quarter panel damage to the State Police vehicle, giving weight to plaintiffs’ claim that the State Police vehicle struck the pickup and forced the driver to lose control.

As to whether the pickup driver could have stopped before the impact with the Price vehicle, the expert testimony was far less than conclusive, and the pickup driver testified that the brakes on the pickup were not working. There was no testimony about what effect, if any, the missing left front tire might have made in the efforts of the driver to stop or avoid the collision. In addition, the lack of hard evidence concerning the speed of the pickup during the chase and the distance it traveled after leaving the expressway to the point of impact add to the conclusion that the testimony of the pickup driver and his passenger is not entirely unworthy of belief.

Viewing the evidence in a light most favorable to the nonmoving party, as we must, we conclude that there were genuine issues of material fact sufficient to defeat defendants’ motions for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The decision in *Robinson v City of Detroit*, 462 Mich 439; 613 NW2d 307 (2000), does not support

summary disposition here because the facts are in dispute on the questions of whether a police vehicle hit the fleeing pickup or physically forced it off the road and whether, if the pickup was forced off the road, the driver could have regained control in time to avoid the collision. *Id.* at 444-446. Our dissenting colleague's conclusions to the contrary, that plaintiffs' theory of the accident is "implausible" and that it is "unlikely" that the force of an impact caused the pickup to cross the median and strike the Price vehicle, simply does not square with the legal standard for granting summary disposition, nor with the record evidence before us.

The majority opinion in *Robinson* succinctly sums up the legal posture of this case with its holdings that: (1) the police owe a duty to an innocent victim of a police chase, in this case, plaintiff, Margaret Price; (2) where the police physically force the fleeing off the road or into another vehicle, the innocent victim may seek recovery against the governmental agency pursuant to the motor vehicle exception to governmental immunity; and (3) innocent victims who are injured as a result of police chases may sue an individual officer if the officer's actions are the proximate cause of the accident. *Id.* at 469. In this case, there is evidence that the police vehicle physically forced the driver of the pickup to lose control and leave the road, resulting in the collision with plaintiff's vehicle. The evidence also supports the conclusion that forcing the pickup driver off the road was the proximate cause of the collision.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Joel P. Hoekstra